

## SUBCHAPTER B—PROCEDURE

### PART 404—REGULATIONS AND LICENSING REQUIREMENTS

#### Subpart A—General

- Sec.  
404.1 Scope.  
404.3 Filing of petitions to the Associate Administrator.  
404.5 Action on petitions.

#### Subpart B—Rulemaking

- 404.11 General.  
404.13 Petitions for extension of time to comment.  
404.15 Consideration of comments received.  
404.17 Additional rulemaking proceedings.  
404.19 Hearings.

AUTHORITY: 49 U.S.C. 70101–70121.

SOURCE: Docket No. 43810, 53 FR 11013, Apr. 4, 1988, unless otherwise noted.

#### Subpart A—General

##### § 404.1 Scope.

This part establishes procedures for issuing regulations to implement 49 U.S.C. Subtitle IX, chapter 701, and for eliminating or waiving requirements for licensing or permitting of commercial space transportation activities under that statute.

[Doc. No. FAA–2006–24197, 72 FR 17016, Apr. 6, 2007]

##### § 404.3 Filing of petitions to the Associate Administrator.

(a) Any person may petition the Associate Administrator to:

- (1) Issue, amend, or repeal a regulation to eliminate as a requirement for a license or permit any requirement of Federal law applicable to commercial space launch and reentry activities and the operation of launch and reentry sites;
- (2) Waive any such requirement in the context of a specific application for a license or permit; or
- (3) Waive the requirement for a license.

(b) Each petition filed under this section must:

- (1) Be submitted in duplicate to the:
  - (i) Office of Commercial Space Transportation, Federal Aviation Adminis-

tration, 800 Independence Avenue, SW., Room 331, Washington, DC 20591; or

- (ii) Be submitted in duplicate to the U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590;

- (2) Set forth the text or substance of the regulation or amendment proposed, the regulation to be repealed, the licensing or permitting requirement to be eliminated or waived, or the type of license or permit to be waived;

- (3) In the case of a petition for a waiver of a particular licensing or permitting requirement, explain the nature and extent of the relief sought;

- (4) Contain any facts, views, and data available to the petitioner to support the action requested; and

- (5) In the case of a petition for a waiver, be submitted at least 60 days before the proposed effective date of the waiver unless good cause for later submission is shown in the petition.

(c) A petition for rulemaking filed under this section must contain a summary, which the Associate Administrator may cause to be published in the FEDERAL REGISTER, which includes:

- (1) A brief description of the general nature of the action requested; and

- (2) A brief description of the pertinent reasons presented in the petition for instituting the rulemaking.

(d) A petition filed under this section may request, under 14 CFR 413.9, that the Department withhold certain trade secrets or proprietary commercial or financial data from public disclosure.

[Doc. No. FAA–2005–21234, 71 FR 51971, Aug. 31, 2006, as amended at 72 FR 68475, Dec. 5, 2007]

##### § 404.5 Action on petitions.

(a) *General.* No public hearing, argument or other proceeding is held on a petition before its disposition under this section.

(b) *Grants.* In the case of a petition for a waiver, the Associate Administrator may grant the waiver if the Associate Administrator determines that the waiver is in the public interest and will not jeopardize public health and

safety, the safety or property, or any national security or foreign policy interest of the United States. In all other cases, if the Associate Administrator determines that the petition contains adequate justification, the Associate Administrator initiates a rulemaking action under Subpart B of this part.

(c) *Denials.* If the Associate Administrator determines that the petition does not justify initiating rulemaking action or granting the waiver, the petition is denied.

(d) *Notification.* Whenever the Associate Administrator determines that a petition should be granted or denied, the petitioner is notified of the Associate Administrator's action and the reasons supporting it.

(e) *Reconsideration.* Any person may petition FAA to reconsider a denial of a petition the person had filed. The petitioner must send a request for reconsideration within 60 days after being notified of the denial to the same address to which the original petition went. For FAA to accept the petition, the petitioner must show the following:

(1) There is a significant additional fact and the reason it was not included in the original petition;

(2) FAA made an important factual error in our denial of the original petition; or

(3) The denial by the FAA is not in accordance with the applicable law and regulations.

[53 FR 11013, Apr. 4, 1988, as amended by Amdt. 404-2, 68 FR 35289, June 13, 2003; Amdt. 404-3, 71 FR 51971, Aug. 31, 2006]

### Subpart B—Rulemaking

#### § 404.11 General.

(a) Unless the Associate Administrator finds, for good cause, that notice is impractical, unnecessary, or contrary to the public interest, a notice of proposed rulemaking is issued and interested persons are invited to participate in proceedings related to each substantive rule proposed.

(b) Unless the Associate Administrator determines that notice and comment is necessary or desirable, interpretive rules, general statements of policy, and rules relating to organization, procedure, or practice are issued

as final rules without notice or other proceedings.

(c) In the Associate Administrator's discretion, interested persons may be invited to participate in the rulemaking proceedings described in § 404.19 of this Subpart.

[53 FR 11013, Apr. 4, 1988, as amended by Amdt. 404-2, 68 FR 35289, June 13, 2003]

#### § 404.13 Petitions for extension of time to comment.

(a) Any person may petition the Associate Administrator for an extension of time to submit comments in response to a notice of proposed rulemaking. The petition shall be submitted in duplicate not less than three days before expiration of the time stated in the notice. The filing of the petition does not automatically extend the time for petitioner's comments.

(b) The Associate Administrator grants the petition only if the petitioner shows a substantive interest in the proposed rule and good cause for the extension, and if the extension is in the public interest. If an extension is granted, it is granted as to all persons and is published in the FEDERAL REGISTER.

[53 FR 11013, Apr. 4, 1988, as amended by Amdt. 404-2, 68 FR 35289, June 13, 2003]

#### § 404.15 Consideration of comments received.

All timely comments are considered before final action is taken on a rulemaking proposal. Late filed comments may be considered to the extent possible, provided they do not cause undue additional expense or delay.

#### § 404.17 Additional rulemaking proceedings.

The FAA may initiate other rulemaking proceedings, if necessary or desirable. For example, it may invite interested people to present oral arguments, participate in conferences, appear at informal hearings, or participate in any other proceedings.

[Doc. No. FAA-2006-24197, 72 FR 17016, Apr. 6, 2007]

#### § 404.19 Hearings.

(a) Sections 556 and 557 of Title 5, United States Code, do not apply to